

investments is actually quite limited.²⁸

The RBOCs may contend, of course, that in-region RBOCs have an incentive to invest that does not exist for out-of-region RBOCs. If this is correct, then the source of that incentive necessarily arises not out of the in-region RBOC's ownership of Internet facilities per se, but rather out of its ownership of bottleneck wireline facilities, and its control of an embedded customer base. Accordingly, the RBOCs cannot argue that in-region RBOCs would display different investment behavior without admitting that its view of the Internet as being safely isolated from monopoly issues is flat wrong.

**V. THE RELIEF REQUESTED IN THE RBOCs' PETITIONS
IS FATALY UNSPECIFIC AND OVER INCLUSIVE.**

In its petition, Bell Atlantic states it seeks a Commission order "fully deregulating [Bell Atlantic's] packet-switched networks," including Internet, "Intranet," and "Extranet" services. (Petition at p. 2.) The U S West request relates to "packet and cell-switched data networks" and the Ameritech petition includes a request for deregulation relating to "high speed data services" and "high speed broadband services."

While these requests may appear at first glance to be limited in their applicability, because of advances in

²⁸ See note 1 supra.

technology, in fact, they would have a very wide applicability. Deregulation of packet switched networks likely would involve much more than Internet-like services. Packet-switched networks can provide a number of services similar to the data services that are currently carried over the Public Switched Network ("PSN"), and can even be used for voice services.²⁹ Likewise, the request to provide "high-speed broadband services without regard to present LATA boundaries" can be read very broadly to encompass far more than the Internet backbone facilities and connectivity that are the focus of most of the petition. The petitions' lack of definitions or precision as to the Commission rulings being requested would likely result in significant disputes in the future over the scope of the request and any Commission ruling thereunder.³⁰

In its petition, U S WEST tries to create the impression that its request is narrowly targeted by indicating it does not seek forbearance from section 251(c) for "bottleneck" facilities, and by its lengthy focus on the needs of rural end users.

²⁹ In much of the petition Bell Atlantic speaks of "packet-switched data services," but occasionally speaks simply of "packet-switched services."

³⁰ Absent any additional clarification, it is unclear why deregulation of Bell Atlantic "intranets" is even needed. Unless Bell Atlantic is using a definition of "intranet" that does not square with general usage, there is absolutely no action the Commission need take to deregulate the provision of intranet services. Intranet services are provided using inside wire and CPE, both of which are already deregulated. Because Bell Atlantic does not define "extranet" services, it is completely unclear what action the Commission is being asked to take.

However, the impression that U S WEST is seeking only a narrow application of section 706 proves to be entirely illusory. First, its limitation of section 251(c) forbearance to "non-bottleneck" facilities is meaningless because nowhere does U S WEST explain how it defines this term.

Second, U S WEST's emphasis on rural end users provides no limitation because its request extends to urban as well as rural areas. Furthermore, if there were any logic to applying section 706 solely in a rural context, it would only become appropriate to so at a time when it was clear that the competitive environment of urban areas was not also spreading to rural areas. Monopoly provisioning should function only as a last resort, and not as an initial policy preference. Inasmuch as U S WEST has not even filed for section 271 authority for any state, it is manifest that U S WEST has not yet fulfilled its competitive obligations even in urban areas.

VI. FUNDAMENTAL POLICY MATTERS RAISED IN THE RBOC PETITIONS ARE ALSO PRESENTED IN THE COMPUTER III REMAND, AND CAN ONLY BE ADDRESSED IN THAT FNPRM.

Beyond the legal defects of the RBOC section 706 petitions, and the absence of any cause-and-effect between the relief they request and the Internet speed issues they claim to be concerned about, the petitions are also defective because they attempt to address policy issues already implicated in the Further Notice of Proposed Rulemaking in CC Docket No. 95-20 released January 29,

1998 (FCC 98-8; "Streamlined Information Services FNPRM").

First, Ameritech engages in an extensive discussion of why it believes that neither the requirements of sections 271 or 272, nor structural separations in general, should apply to its provisioning of data services (Ameritech Petition at 8-26).³¹ This is precisely the thrust of the policy issues currently being addressed in the Streamlined Information Services FNPRM (§ 7): "We want to encourage the BOCs to provide new technologies and innovative information services that will benefit the public, as well as ensure that the BOCs will make their networks available for the use of competitive providers of such services." Plainly, the RBOCs are not entitled to use section 706 petitions in order to avoid the procedural requirements of the Ninth Circuit's remand.

Second, even if the RBOCs' policy claims were properly presented in their section 706 petitions, the RBOCs fail to address at all the important issue of allocation of investment, revenues and expenses, in the event the Commission were to grant their requested relief. As the Commission noted in regards to the RBOCs' video dial tone efforts, creation of a separate regulatory regime -- especially one lacking in structural

³¹ Of course, the short answer to this is that Congress has already determined that sections 271 and 272 apply to RBOC provisioning of interLATA data services, and prohibited the Commission from forbearing to enforce this prohibition in section 10 (see Part I, supra).

separations -- would require a strict accounting mechanism in order to detect and thereby prevent cross-subsidization.³²

Third, Ameritech's claims concerning section 251(h) are completely unfounded, and not supported by Commission authority. Ameritech asks the Commission to "clarify" section 251(h) so as to provide that section 251(c) applies only to ILECs proper, and not to any data affiliates of the RBOCs (Ameritech Petition at 25). But the Commission has already addressed section 251(h), and determined that it provides the definition of incumbent local exchange carrier, and also "sets forth a process by which the FCC may decide to treat LECs and incumbent LECs" (Local Competition Order at ¶ 1248). Nowhere has the Commission held that section 251(h) empowers it to relieve an ILEC of its section 251(c) obligations.³³ The Commission should take care to squelch the gapping hole in section 251(c) regulation sought by Ameritech. By moving new (or existing) investment into a separate subsidiary by simply sticking the label of "data services" on whatever it chooses, Ameritech could exploit such a "clarification" to

³² See Streamlined Information Services FNPRM at ¶ 44 (recognizing that cost misallocation incentive still exists for ILECs under price cap regulation).

³³ Ameritech cites the Commission's Non-Accounting Safeguards Order (¶ 312) for the proposition that a: "BOC affiliate is not an incumbent local exchange carrier for section 251 purposes" (Ameritech Petition at 24). What Ameritech fails to explain is the Commission's Non-Accounting Safeguards Order holding is predicated on: (1) RBOC compliance with section 271; (2) RBOC compliance with section 272; and (3) RBOC compliance with section 251(c).

effectively gut section 251(c)'s requirements.

**VII. THE DEREGULATION SOUGHT BY PETITIONERS
WOULD HAVE HARMFUL EFFECTS ON COMPETITION.**

**A. Petitioners have Significant Market Power
Over the Internet Within Their Service Territory.**

Petitioners' claims that all Federal regulation of an RBOC's use of Internet facilities can be safely abandoned without posing any anticompetitive threats is wrong. First, because the vast majority of Internet users in each BOC territory are forced to reach their Internet providers over BOC local wire loops and circuit switches, the RBOCs has both the opportunity, and a massive incentive, to retard any diversion of existing traffic to the Internet:

"Today, the vast majority of Internet users and ISPs must depend on incumbent LECs for their connections to the Internet. These incumbent LECs have huge investments in their existing circuit-switched networks, and thus may be reluctant, absent competitive pressure, to explore alternative technologies that involve migrating traffic off those networks." (Emphasis supplied.)³⁴

Second, RBOCs are currently exercising their monopoly power over Internet markets in very specific instances:

- Bell Atlantic and Ameritech are refusing to comply with their reciprocal compensation arrangements with competitive local exchange providers concerning local calls to ISPs. Even though Bell Atlantic told the Commission that it would pay reciprocal compensation to CLECs for any calls from Bell Atlantic customers made to Internet providers served by

³⁴ Digital Tornado: The Internet and Telecommunications Policy, OPP Working Paper Series, March 1997, at 83.

CLECs,³⁵ Bell Atlantic changed its tune shortly after it obtained the rules it wanted from the Commission, and now is refusing to pay CLECs millions of dollars that it owes for these calls. Ameritech is doing the same.

- Bell Atlantic requires new entrants to collocate at every point at which they seek UNEs, but makes physical collocation scarce by reserving central office space for "classrooms," or by not removing obsolete and unused equipment. Although this leaves competitors with no practical choice except to use virtual collocation, Bell Atlantic refuses to perform any recombination of UNEs in such spaces, thereby preventing competitors from utilizing extended digital loops and other competitive services that would compete with Bell Atlantic's own Internet connectivity services.

B. Bell Atlantic Has Acknowledged That the Internet Can Be Subject to Monopoly Abuse.

Bell Atlantic also provides an excellent example of how current restrictions on interLATA information services are being flouted by the RBOCs. All the BOCs are perfectly entitled to provide intraLATA access to interLATA information services, and also to market those access services. However, it is manifestly clear that a BOC's permitted information access service turns into an interLATA information service -- and thereby requires, at a minimum, BOC provisioning via a section 272 subsidiary -- once a BOC: (1) bundles its charges for information access with the

³⁵ See Reply Comments of Bell Atlantic filed May 30, 1996, in CC Docket No. 96-98 at 21: "Moreover, the notion that bill and keep is necessary to prevent LECs from demanding too high a rate reflects a fundamental misunderstanding of the market. If these rates are set too high, the result will be that new entrants, who are in a much better position to selectively market their services, will sign up customers whose calls are predominantly inbound, such as credit card authorization centers and internet access providers. The LEC would find itself writing large monthly checks to the new entrant." (Emphasis supplied.)

provisioning of an interLATA service (even where the interLATA portion is provided by a non-affiliated ISP); or (2) fails to provide end users a full choice of ISPs via its information access service; or (3) offers the service directly to end users rather than ISPs.³⁶

Unfortunately, Bell Atlantic's current information access service is a three-time loser that triggers each of the above provisions. As ALTS pointed out in its June 16, 1997, opposition to BA's CEI Amendment (CCB Pol. 96-09), Bell Atlantic's "Internet Protocol Routing Service" or "IPRS" is: (1) bundled with interLATA information services charges; (2) fails to provide end users with a full choice of ISPs; and (3) is directed to end users rather than ISPs. Thus, Bell Atlantic's IPRS is currently being provisioned illegally by Bell Atlantic because it is not offered via a section 272 subsidiary, among other matters.

³⁶ Non-Accounting Safeguards Order, ¶ 57: "... we conclude that the term 'interLATA information service' refers to an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component provided to the customer for a single charge." Bell Atlantic's advertisements claim its services (which include an interLATA function) are being provided by Bell Atlantic Internet Solutions Inc.

Nor would it be a defense if Bell Atlantic could show it were only reselling an interLATA service. See Non-accounting Safeguards at 276: "We note that even when an information service and interLATA transmission service are ostensibly separately priced, if the BOC offers special discounts or incentives to customers that take both services, this would constitute sufficient evidence of bundling to render the information service an interLATA information service" (emphasis supplied).

CONCLUSION

It would send exactly the wrong policy message to start removing restrictions before the RBOCs complete their existing section 251 and 271 obligations in all of their service territories. The RBOCs' attempts to escape the pro-competitive regulations that currently apply to the Internet is based on bad facts and bad policy. The Commission should immediately reject the petitions, and refuse to consider any such request until Petitioners comply with sections 251 and 252, and receive section 271 approval in all their states.

Respectfully submitted,

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April 6, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April, 1998, copies of the foregoing Opposition of the Association for Local Telecommunications Services were served via first class mail, postage prepaid, or by hand as indicated to the parties listed below.

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